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Attorneys For XPO Last Mile, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

SEARS HOLDINGS CORPORATION, et al.,

Debtors.

Chapter 11
Case No. 18-23538 (RDD)
(Jointly Administered)

**LIMITED PROTECTIVE OBJECTION OF XPO LAST MILE, INC.
TO NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH
GLOBAL SALE TRANSACTION [Docket No. 1731]**

XPO Last Mile, Inc. (“Last Mile”), by counsel, hereby files this limited protective objection (the “Objection”) to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”) and states the following in support of this Objection:

PROCEDURAL BACKGROUND

1. Beginning on October 15, 2018 (the “Petition Date”) and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On November 19, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief [Docket No. 816] (the “Global Bidding Procedures Order”).

3. On January 18, 2019, the Debtors filed the Notice of Successful Bidder and Sale Hearing [Docket No. 1730], which, among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”) to acquire all or substantially all of the Global Assets was the highest or best offer for the Global Assets.

4. On January 18, 2019, the Debtors filed the Cure Notice, and on Exhibit A thereto at Lines Nos. 51 through 69 identifies contracts with Last Mile. *See* Cure Notice, Exhibit A, page 10, Line Nos. 51 to 69.

5. Although it is not clear in the Cure Notice, it appears that the Debtors are proposing an aggregate cure amount for all Last Mile contracts in the amount of \$674,556 (the “Proposed Cure Amount”).

FACTUAL BACKGROUND

6. Last Mile provides certain transportation, third party logistics and warehouse distribution services to the Debtors pursuant to certain prepetition executory contracts, including a Warehouse Agreement dated February 8, 2015, with Innoval Solutions, Inc.; a Home Delivery and Shuttle Carrier Agreement dated February 8, 2015, as amended April 13, 2017, with Innoval Solutions, Inc.; and a Home Delivery and Shuttle Carrier Agreement dated February 15, 2015, as amended April 11, 2017, with Sears, Roebuck and Co. (collectively, the “XPO Contracts”).

6. After the Petition Date, the Debtors and Last Mile entered into an agreement dated as October 18, 2018 (the “Postpetition Agreement”). The terms of the Postpetition Agreement are confidential.

7. Since the Petition Date, Last Mile and the applicable Debtors have continued to perform their respective obligations under the terms of the Last Mile Contracts and the Postpetition Agreement.

8. Because Last Mile continues to perform services under the Last Mile Contracts, and the Debtors continue to pay for such services, in the ordinary course of business pursuant to contract terms, the outstanding balance owed under the Last Mile Contracts is not static and changes from day to day.

LIMITED OBJECTION TO PROPOSED CURE AMOUNT

9. All amounts currently owed under the Last Mile Contracts pertain to services rendered after the Petition Date. As of January 23, 2019, the total amount owed to Last Mile for services rendered under the Last Mile Contracts is \$1,663,914.71 (the “January 23, 2019 Accrual”). A detailed statement of the charges that make up the January 23, 2019 Accrual has been delivered to the Debtors and their counsel.

10. There is no current payment default under the Last Mile Contracts and almost all of the January 23, 2019 Accrual is for current charges.

11. Last Mile files this limited objection to the Proposed Cure Amount solely because Last Mile is unable to determine what the Proposed Cure Amount pertains to and how it relates to assumption and assignment of the Last Mile Contracts on the effective date of a sale to the Buyer.

12. Because Last Mile continues to perform daily services for the Debtors, and the Debtors continue to pay for such services pursuant to the Last Mile Contracts, Last Mile cannot state with certainty the total amount that will be outstanding, and the amount of which, if any, will be due, at the time of assumption and assignment of the Last Mile Contracts.

RESERVATION OF RIGHTS

12. Last Mile reserves its right to object to any arrangement whereby the Buyer may utilize (directly or indirectly) Last Mile's services after the closing of the Global Asset Sale Transaction without assumption of the Last Mile Contracts.

WHEREFORE, Last Mile respectfully requests that this Court preserve the right of Last Mile to require the Debtors to cure the amount, if any, that should become past due under the Last Mile Contracts at the time of assumption of the Last Mile Contracts, and to afford such other and further relief as is just and appropriate.

Respectfully Submitted,

Dated: January 25, 2019

/s/ Deborah L. Fletcher

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, a copy of the foregoing Limited Protective Objection of XPO Last Mile, Inc. To Notice of Cure Costs And Potential Assumption And Assignment of Executory Contracts and Unexpired Leases In Connection With Global Sale Transaction was served in accordance with the Amended Order Implementing Certain Notice and Case Management Procedures (Docket No. 405) and the Order Approving Global Bidding Procedures (Docket No. 816).

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